IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1111 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

MOHANBHAI PRABHUBHAI PATEL - Respondent(s)

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Appearance :

MR MK SHELAT for Petitioner(s) : 1,

MR AK CLERK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/06/2005

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner – Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award passed by

the Labour Court, Surat dated 2-6-04 passed in Reference No.308/03 in partly allowing the same and directing the petitioner to reinstate the respondent – workman without back wages and further imposing the punishment of withholding of two yearly increments with future permanent effect.

2. The respondent – workman was serving as a Conductor at Olpad Depot of Surat of the petitioner – corporation. That on 21-5-01, while he was on duty on Mandvi – Chavad route, the bus was checked by the squad of the petitioner – corporation at Vadi and during the said checking, it was found that the respondent had not collected fare and issued ticket in respect of one passengers travelling from Zankhvav to Umarkhadi. He had also not collected fare and issued ticket in respect of five passengers travelling from Zankhvav to Kevdi. During the process of checking, the respondent had provoked the passengers of the bus and of Vadi stand and created a hostile atmosphere. The respondent did not give a complete statement during the time of checking and thereafter, refused to give any further statements to the members of the checking squad. Thereafter, a departmental inquiry was initiated against the respondent and charge sheet was

issued on 31-7-01 and the competent authority vide order dated 31-5-02 dismissed the respondent from service after holding the charges as proved. Thereafter, the respondent preferred an appeal, which came to be dismissed. Thereafter, the respondent raised an industrial dispute and challenged this dismissal order and the dispute was referred for adjudication before the Labour Court at Surat and the Labour Court on appreciation of evidence partly allowed the said Reference directing the petitioner to reinstate the respondent without back wages and further imposed the punishment of withholding of two yearly increments with permanent future effect by holding that there was no mala fide intention on the part of the respondent in not issuing the tickets. At the time when the checking took place, the bus had travelled from the last stop for a short distance and the workman was in the process of issuing tickets and the booking was open. The Labour Court has also on appreciation of evidence held that it is not proved that the petitioner had created a scene and/or created hostile atmosphere and/or has refused to give statement. Being aggrieved by and dissatisfied with the judgment and award passed by the Labour Court, Surat dated 2-6-2004 passed in Reference No.308/03, the petitioner has preferred the present

Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri MK Shelat, learned advocate appearing on behalf of the petitioner has vehemently submitted that it was established beyond all doubts that the respondent had not issued tickets to in all six passengers and that he had given incomplete statement to the reporter of checking staff and had also refused to complete the same despite being called upon by the members of the checking squad and that the respondent had a history of 17 defaults, most of which were in respect of non issuance of tickets and therefore, the Labour Court has materially erred in ordering the reinstatement and therefore, it is requested to allow the present Special Civil Application.

4. *Per Contra*, Shri AK Clerk, learned advocate appearing on behalf of the respondent workman while opposing the present Special Civil Application has submitted that on appreciation of evidence, the Labour Court has specifically come to the conclusion that there was no mala fide intention on the part of the respondent – workman in not issuing the tickets to six passengers and at the time when checking took place, the bus had

travelled from the last stop for a short distance and that the respondent was in the process of issuing tickets and that booking was open. He has also further submitted that the Labour Court has also specifically held on appreciation of evidence that the respondent workman has not refused to give statement and that he has not tried to create any hostile atmosphere and therefore, it is requested not to interfere with the judgment and award passed by the Labour Court while exercising powers under Articles 226 and 227 of the Constitution of India and therefore, it is requested to dismiss the present Special Civil Application.

5. Heard learned advocate appearing on behalf of the parties.

6. It is true that it was specifically found by the checking squad as well as even by the Labour Court that six passengers were not issued tickets. It is also true that in past also, there are 17 defaults in the account of the respondent workman and out of which 15 defaults are of non-issuance of tickets. However, it is required to be noted that so far as the present case is concerned, the Labour Court on appreciation of evidence has

specifically held that there was no mala fide intention on the part of the respondent workman in not issuing the tickets. The Labour Court has also further held that at the time when the checking took place, the bus had travelled from the last stop for a short distance and that the respondent workman was in the process of issuing tickets and that booking was open. The Labour Court also on appreciation of evidence held that the process of issuing tickets was going on and the respondent had not taken money from the passengers who were not issued the tickets till the time of checking. The Labour Court has also considered the fact that several passengers were issued tickets. On appreciation of evidence, the Labour Court has also specifically held that it is not proved that the petitioner has given only a half statement deliberately and that the respondent workman has tried to create a hostile atmosphere with the help of other passengers. Considering all the above facts and circumstances, the Labour Court has ordered reinstatement, however, denied the back wages and considering the fact that earlier there were 17 defaults in the account of respondent workman, the Labour Court however, imposed the punishment of withholding of 2 yearly increments with permanent future effect. In the

facts and circumstances of the case, the judgment and award passed by the Labour Court, Surat in exercise of powers under Section 11(A) of the Industrial Dispute Act cannot be said to be in any way exercising powers without jurisdiction and/or illegally and/or arbitrarily. The Labour Court has considered all the aspects and thereafter exercised powers under Section 11(A) of the Industrial Dispute Act. In the facts and circumstances of the case the interference of this court in exercise of powers under Articles 226 and 227 of the Constitution of India is not warranted and more particularly, when the respondent is denied back wages as well as further punishment of withholding of two yearly increments with permanent future effect has been imposed by the Labour Court, Surat.

7. Under the circumstances and for the reasons as stated above, the petition fails. Rule discharged. However, there will be no order as to costs.

(M.R.SHAH,J)

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